IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO. 834 OF 2003

Mrs. J. Panigrahi,
The Managing Trustee of Bal Vikas,
an institute of Shishu Welfare Trust
of India. ... Appellant.

V/s.

1/ Mrs. Sameera w/o. Amzad I. Sayyed,

2/ Mr. Amzad Ibrahim Sayyed,

3/ Mrs. Mumtaz Begum Iqbal A. Khan,

4/ Shri Zanjif F. Khan,

5/ State of Maharashtra. ... Respondents.

Shyam Diwan i/b. M/s. Mahimtura & Co.
for the appellant.

Ms. R.C. Nichani i/b. Ms. Sunita Poddar
for respondent Nos.1 and 2.

J.M.D'Silva for respondent Nos.3 and 4.

CORAM : **V.C. DAGA, J.**

RESERVED ON : 17th September 2004.

PRONOUNCED ON : 1st October 2004.

JUDGMENT :

This appeal takes exception to the order dated 13th October, 2003 passed in Notice of Motion No. 2569 of 2003 in Small Cause Suit No. 3225 of 2003 by the Bombay City Civil Court at Bombay directing disclosure of details of the adoptive parents, who have taken the child in adoption, to the Court holding that the guidelines laid down by the Apex Court in the case of ***Laxmi kant Pandey* v/s..** ***Union of India***, AIR 1984 SC 469 in the matter of abandoned of infant children have not been followed.

Factual Matrix :

2/ Filtering out unnecessary details, the factual score giving rise to the present appeal from order, in nutshell, may

be stated. The reference to the appellant and respondents henceforth shall be in their original capacity as were referred to in the trial Court unless it is not mentioned specifically.

3/ The plaintiff No.1 is wife and plaintiff No.2 is husband. Defendant No.1 is the mother of plaintiff No.1 and defendant No.2 is brother-in-law of plaintiff No.1 (sister' s husband). Defendant No.3 – appellant herein; is the Managing Trustee of Bal Vikas, an institute of Shishu Welfare Trust of India. Defendant No.4 is the State of Maharashtra arrayed through Senior Inspector of Police, Worli Police Station, Mumbai.

4/ The unfortunate dispute raised in the present suit is at the instance of biological parents of the infant male in respect of adoption of child Adnaan son of the plaintiffs given in adoption by defendant No.3. The plaintiffs claim to have married at Hyderabad on 22nd May, 2001 as per the Islamic

customs. At the time of marriage, plaintiff No.1 was minor aged about 17-1/2 years. At the time of marriage she was also carrying pregnancy of about eight months. Because of the stiff opposition to the marriage from the family of plaintiff No.1, she eloped from the house to get married.

5/ On 25th June, 2001 i.e. After about a month of marriage plaintiff No.1 delivered a male child in the hospital at Hyderabad. Since plaintiff No.1 was missing from the house, her parents lodged complaint with Worli Police Station, Mumbai. Ultimately, she was traced out in Hyderabad. Her mother, defendant No.1 brought her back to Mumbai on 19th July, 2001 with male child. Plaintiff No.2 was arrested and remained in custody for about 20 days.

6/ The case of the plaintiffs is that plaintiff No.1 was pressurised by her mother and brother-in-law, defendant Nos.1 and 2 respectively to abandon the infant child. That

she was threatened with dire consequences in the event of her refusal to abandon the infant child. That she was told that she would not be allowed to stay in the house, if she did not agree to abandon infant child.

7/ The plaintiffs further alleged that on 16th July, 2001, while plaintiff No.1 was sleeping, defendant Nos.1 and 2 had taken away the infant to the house of orphans run by defendant No.3 at Goregaon and, thereafter, she was compelled to execute several documents in favour of orphanage. The plaintiff No.1 alleged that she felt helpless being alone since plaintiff No.2 was in police custody. In the circumstances, she was left with no alternative but to follow the dictates of defendant Nos.1 and 2.

8/ The plaintiff No.1 submits that in order to save life of her husband and son, she agreed to sign necessary papers without knowing contents thereof since all those documents

were in English. She further alleged that she was minor at the relevant time as such all those documents are not binding on her. She further contends that, after attaining majority, she is entitled to repudiate the contract, if any, and could claim custody of her minor child. As such, after becoming major, she approached the Senior Police Officer of the Worli Police Station, Mumbai to seek custody of her minor child. The Police did not respond, therefore, the plaintiffs directly approached defendant No.3 for return of their minor child. The defendant No.3 also avoided to give any satisfactory answer. The plaintiffs left with no other alternative were required to seek help from social organisation by name; All India Democratic Women' sAssociation. The said association wrote a letter to defendant No.3 on behalf of the plaintiffs and requested for return of minor child to the plaintiffs. The defendant No.3 replied by her letter dated 14th March, 2002; wherein, according to the plaintiffs; it was for the first time disclosed that the child was already given in adoption.

9/ The plaintiffs alleged that under legal advise they were required to file writ petition being Writ Petition No.4875 of 2002 for writ of Habeas Corpus against defendant No.3 and 4 for production of their minor child. The said writ petition was admitted on 25th February, 2003. During pendency of this writ petition, the plaintiffs were also advised to file suit to seek declaration that adoption of their minor son `Adnaan' through defendant No.3 in collusion with defendant Nos.1 and 2 is bad, illegal, null and void. The said suit came to be registered as S.C. Suit No.3225 of 2003. The plaintiffs also claimed mandatory direction directing defendant No.3 for disclosure of whereabouts of the infant child and prayed for his custody.

10/ In the aforesaid suit, plaintiffs took out Notice of Motion No. 2569 of 2003 for interim reliefs claimed therein. By prayer clause (a); they sought mandatory direction against

defendant No.3 to disclose the whereabouts of the infant child and further direction that the child be kept in the custody of the Court. Secondly, for direction against defendant No.3 to disclose the names and addresses of the adoptive parents, if not to the plaintiffs, at least to the Court. Thirdly, plaintiffs also sought interim injunction to restrain defendants from interfering with the rights of the plaintiffs and with further injunction not to remove their minor child from their custody.

11/ On being noticed, defendant Nos.1 and 2 appeared and filed their joint affidavit-in-reply challenging tenability of the suit and contending that their actions are required to be protected they being bonafide in the interest and welfare of the minor child as well as that of plaintiff No.1. That the minor child was given in adoption with the consent of plaintiff No.1 as such the plaintiffs are estopped from claiming custody of the minor child in question.

12/ On being noticed, defendant Nos.1 and 2 appeared and filed their joint affidavit in reply challenging tenability of the suit contending that their actions are required to be protected they being bonafide in the interest and welfare of the minor child as well as that of plaintiff No.1. That the minor child was given in adoption with the consent of plaintiff No.1 as such the plaintiffs are estopped from claiming custody of the minor child in question.

13/ The defendant Nos.3 and 4 also opposed notice of motion and refuted all allegations made against them. They submitted that all precautions laid down by the Apex Court in the case of ***Laxmi Kant Pandey*** (supra) were taken and guidelines incorporated therein have been scrupulously followed. Defendant No.3 urged that she is post-graduate in social work from Tata Institute of Social Sciences and holds post-graduate decree in law from the Bombay University. Her

institute has been responsible for providing shelter to more than 1,500 children out of which 1,000 have been rehabilitated by giving them in adoption. She reiterated that she has faithfully followed all the necessary directions laid down by the Apex Court to be followed by the social organisations in the matters of adoption of the minor children.

14/ The parties were heard by the trial Court on the notice of motion. The trial Court after hearing the parties, by reasoned order found fault with the procedure adopted by defendant No.3 while accepting the custody of the abandoned minor child. Trial Court also found that the plaintiff No.1 being minor at the relevant time, her consent was not a legal and valid, muchless, it could not be said to be a consent without coercion. The trial Court also, prima facie; found that good amount of pressure and coercion was exercised by the mother of plaintiff No.1 and her brother-in-law and that the guidelines laid down by the Apex Court in the case of ***Laxmi***

Kant Pandey (supra) were breached by defendant No.3. The trial Court in this view of the findings made the notice of motion absolute vide its order dated 13th October, 2003 directing defendant No.3 to disclose the details of the adoptive parents of the child of the plaintiffs in a sealed cover to the Court on or before 20th October, 2003 and further ordered that on receipt of such information the adoptive parent shall be made party as defendant to the suit without mentioning their addresses in the cause title of the suit with further direction to the Registrar to serve copies of the proceeding on them. This aforesaid order is the subject matter of this appeal from order.

Submissions :

15/ In a persuasive address on behalf of appellant – defendant No.3, Mr.Sham Diwan forcefully urged that the suit filed by the plaintiffs is not at all maintainable in view of the judgment of the Apex Court in the case of **Laxmi Kant Pandey** (supra) as there is a valid adoption of the infant child

sanctioned by the competent Court. He submits that the child in question has been legally surrendered by plaintiff No.1 (mother), who then being a minor, had herself and through her parents given a requisite consent to relinquish her minor child. In the circumstances, declaration sought by the plaintiffs cannot and ought not be granted as the child is given in adoption. He further submits that the suit in question as on date is rendered infructuous as the relief claimed by the plaintiffs cannot be granted in view of the orders passed by the competent court under which the infant child has been adopted by the adoptive parents. In his submission, the suit, as framed and filed, is misconceived and not maintainable. He submits that plaintiff No.1, by executing necessary legal documents, has surrendered her infant child. Such document having been executed in July, 2001 by plaintiff No.1, she has no right to claim relief in absence of any challenge to the said documents. In other words, in his submission, unless declaration to cancel those documents is

sought, no relief could be granted in favour of the plaintiffs.

16/ Mr. Diwan, learned counsel for the appellant raised number of technical pleas, inter alia, contending that the notice of motion is barred by delay and laches. He tried to highlight the same by raising following contentions :

> [a] That plaintiff No.1 admits that from September, 2001 she was no longer under influence of defendant Nos.1 and 2 but she did not take any step to contact defendant No.3 or express her intention to claim her minor child.
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> [b] That on 20th December, 2001, plaintiff No.1 wrote letter to the Police, however, she did not take any further proceedings to claim the infant child.
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> [c] That on 28th December, 2001, plaintiff No.1 visited defendant No.3 and was informed that infant child was taken in adoption, however, she did not take any specific proceedings to claim custody of her son.
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> [d] That on 18th February, 2002, plaintiffs again visited defendant No.3 and were again informed that their minor child was taken in adoption by the adoptive parents under the order of the competent Court, however, they did not take any further proceedings to claim custody of the infant child.

[e] That on 14th March, 2002 defendant No.3 informed the plaintiffs through All India Democratic Womens' Association that the infant child was already given in adoption, even then plaintiffs did not take any further proceedings to set up any right to claim custody of their infant child.

[f] On 22nd December, 2003, plaintiffs admitted in their affidavit in rejoinder that on 14th March, 2002 they became aware that the infant child was given in adoption, still they did not take any further proceedings to enforce their alleged right if any.

17/ Mr.Diwan further submitted that the impugned order is contrary to law laid down by the Apex Court in the case of ***Laxmi Kant Pandey*** (supra) and sought to place reliance on para-23 of the said judgment in particular. Mr. Diwan, in order to show the compliance of the rules, regulations and the guidelines laid down by the Apex Court, placed a graphic picture right from the stage plaintiff No.1 approached defendant No.3 and, thereafter, the steps taken by her from time to time right up to the stage of giving up the child in adoption after completing all legal formalities in that behalf.

18/ Mr. Diwan, with all force at his command submitted that it is absolutely essential that the adoptive parents should not have any opportunity to know who are the biological parents of the child taken by them in adoption. At the same time, he further submits that the biological parents also should not have any opportunity of knowing who are the adoptive parents of their child who have taken in adoption. In this view of the matter, trial Court should not have directed disclosure of the details of the adoptive parents considering the welfare of the child. He submits that it is in the interest of the child that none of the parents either biological or adoptive should know the details of each other. He further submits that this being a sensitive matter, the manner in which the trial Court has casually decided the issue in question needs interference at the hands of this Court. He went a step ahead and urged that this Court should dismiss the suit holding it to be not maintainable so as to arrest further trial of the suit.

19/ Per contra, Ms. Nichani, learned counsel for the plaintiffs with her well researched submissions tried to highlight number of breaches alleged to have been committed by defendant No.3 – appellant herein. She submits that in Islamic law, natural guardian of the minor child is father. Father was taken in police custody on or about 10th July, 2001. The plaintiff No.1 delivered a male child in 26th June, 2001 i.e. Within one month from the date of marriage. On 16th July, 2001, plaintiff No.1 was taken to the orphanage. She was physically compelled and mentally tortured to surrender or abandon her minor child on the very same day i.e. much before the child could complete a period of three months as set out by the Apex Court in the case of ***Laxmi Kant Pandey*** (supra). She further submits that the mother of plaintiff No.1 is opposing prayer for grant of interim relief out of vengions under the influence of defendant No.3 – appellant herein. She further submits that the mother of plaintiff No.1 had no right

to coerce her minor daughter to abandon her minor child when she herself was minor. That the consent given by the minor has no consent in the eye of law. That the same can be repudiated after attaining age of majority as such plaintiff No.1 was perfectly justified in challenging the legality and execution of the alleged documents alleged to have been obtained by defendant No.3 under coercion. She further submits that absence of prayer for declaration to set aside the documents is nothing but a technical argument which should not deter this Court from dismissing the appeal in question as the order passed by the trial Court is well reasoned order and is based on law laid down by the Apex Court in the case of ***Laxmi Kant Pandey*** (supra); wherein Apex Court clearly laid down that no orphanage shall accept the child before expiry of three months from the date of birth of the child and that no orphanage shall give the child in adoption before expiry of three months, subsequently modified to two months, from the date of surrender or abandonment of

the child in favour of orphanage. She further submits that this period of two or three months is given to the biological parents to reconsider as to whether they are in position to take care of the child handed over to the orphanage. If they find that they can, then it is open for them to claim custody of their child and look after the welfare of the child. She submits that after the expiry of the total period of six months, if the child is given in adoption following procedure laid down as per the law for the time in force, then, certainly, biological parents cannot have any right either to challenge the adoption or to know the details of the adoptive parents. However, in the case in hand, she submits that the entire procedure adopted by defendant No.3 is clearly in breach of the guidelines laid down by the Apex Court in the case of ***Laxmi Kant Pandey*** (supra) coupled with the fact that plaintiff No.1 was coerced and pressurised to abandon the infant child when she herself was minor at the relevant time, as such Ms. Nichani submits that this is a fit case; wherein the order of the trial Court deserves

to be sustained. She further submits that no steps were taken by defendant No.3 to find out wishes of the biological father of the infant which was obligatory on the part of defendant No.3. It was also obligatory on the part of defendant No.3 to find out whereabouts of the father of the infant child. The minor child less than three months old could not have been accepted by defendant No.3. She submits that undue haste shown by defendant No.3 is sufficient to demonstrate coercion, undue influence and absence of due precautions as expected by the Apex Court. She, therefore, submits that the appeal is liable to be dismissed with heavy costs maintaining the impugned order of the trial Court.

20/ In rejoinder, Mr.Diwan while reiterating his earlier submissions urged that the biological parents have no legal right to file such suit and seek details of the adoptive parents. He further went on to submit that the Apex Court judgment in the case of ***Laxmi Kant Pandey*** (supra) does not make any

difference between consent given by biological mother on the ground of her minority or majority. According to him, the issue in question cannot be decided on the touch stone of the provisions of the Contract Act. It has to be considered on the touchstone of a public policy, considering the welfare of the child and the emotional attachment which the adoptive parents must have developed by now and, thus, it would not be in the interest of anybody to permit disclosure of the details. He, thus, submits that the impugned order cannot be sustained on any count whatsoever.

Consideration :

21/ Having heard rival parties at length, before considering the rival submissions it would be necessary to notice list of events with relevant dates which have been brought on record.

On 20th June, 2001 a male child was born to plaintiff Nos.1 and 2. On 16th July, 2001, plaintiff No.1 accompanied

by her mother – defendant No.1 approached defendant No.3 stating that she was minor, aged about 17-1/2 years is not in a position to maintain her minor child. She wanted to have the child put up for adoption. On 16th July, 2001 entry in the visitors book maintained by defendant No.3 was taken by defendant No.3 institute. Again on 16th July, 2001, plaintiff No.1 signed declaration with other necessary legal documents witnessed by her sister and brother-in-law stating that a child was born out of wedlock and that she was not in a position to look after the child. She, therefore, requested defendant No.3 to take custody of the child and, if possible, have the child adopted in India or abroad. On 16th July, 2001 itself, separate declarations of Ikbal Khan, father of plaintiff No.1 and Smt.Mumtaz Begum, mother of plaintiff No.1 were obtained by defendant No.3 recording their consent to the adoption of the child born to their daughter. In the month of October, 2001, the child was put in custody and care of the adoptive parents after initiating and completing all legal

formalities of adoption. On 2nd December, 2001, plaintiff No.1 claims to have attained majority. On 20th December, 2001, plaintiff No.1 claims to have addressed a letter to the Senior Inspector, Worli Police Station, Mumbai to claim custody of her minor child and lodged a complaint against defendant No.3. On 28th December, 2001, plaintiff No.1 met defendant No.3 and for the first time came to know that the child was given in adoption and that it was not possible for her to return her minor child. On 16th February, 2002, a letter was addressed by All India Democratic Women' s Association requesting defendant No.3 to return the minor child to plaintiff No.1. On 14th March, 2002, defendant No.3 replied to the letter dated 16th February, 2002 to All India Democratic Women' sAssociation placing necessary facts on record. On 3rd September, 2002, plaintiffs filed Writ Petition No.5875 of 2002 before this Court seeking direction to produce infant child before the Court and in alternative seeking direction to defendant No.3 to disclose details of the

child's custody and whereabouts. Rule was issued in this writ petition on 25th February, 2003. On 2nd July, 2003, plaintiffs filed suit in question with notice of motion referred to hereinabove. On 13th October, 2003, the impugned order came to be passed by the trial Court directing defendant No.3 to disclose the details of adoptive parents to the Court on or before 20th October, 2003. On 20th October, 2003, present appeal from order came to be filed.

22/ The above sequence of events are not in dispute The undisputed sequence of events need appreciation in the light of the law laid down by the Apex Court in the case of ***Laxmi Kant*** (supra); wherein the Apex Court was dealing with various complex questions, whether a child should be allowed to be adopted by the foreign parents, and if so, the procedure to be followed for that purpose; what type of safeguards could be provided to the biological parents; at the same time how the interest of the adoptive parents could be protected; what

precautions are necessary before the biological parents are allowed to relinquish their child and how the Court is expected to deal with an application for guardianship of a child, if made to it. While dealing with all these complex questions, the Apex Court thus said :

> " Since there is no statutory enactment in India providing for adoption of a child by foreign parents or laying down the procedure which must be followed in such a case, resort is had to the provisions of the Guardians and Wards Act (8 of 1890) for the purpose of facilitating such adoption. The primary object of giving the child in adoption must be the welfare of the child.
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> When the parents of a child want to give it away in adoption or the child is abandoned and it is considered necessary in the interest of the child to give it in adoption, every effort must be made first to find adoptive parents for its within the country.
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> If the biological parents are known, they should be properly assisted in making a decision about relinquishing the child for adoption, by the Institution or Center or Home for Child Care or social or child welfare agency to which the child is being surrendered. Before a decision is taken by the biological parents to surrender the child for adoption, they should be helped to understand all the implications of adoption including the possibility of adoption by a foreigner and they should be told

specifically that in case the child is adopted, it would not be possible for them t have any further contact with the child. The biological parents should not be subjected to any duress in making a decision about relinquishment and even after they have taken a decision to relinquish the child for giving in adoption, a further period of about three months should be allowed to them to reconsider their decision. But once the decision is taken and not reconsidered within such further time as may be allowed to them, it must be regarded as irrevocable and the procedure for giving the child in adoption to a foreigner can then be initiated without any further reference to the biological parents by filing an application for appointment of the foreigner as guardian of the child. Thereafter there can be no question of once again consulting the biological parents whether they wish to give the child in adoption or they want to take it back. The biological parents should not be induced or encouraged or even be permitted to take a decision in regard to giving of a child in adoption before the birth of the child or within a period of three months from the date of birth.

..... But, we are definitely of the view that no notice under this section should be issued to the biological parents of the child since it would create considerable amount of embarrassment and hardship if the biological parents were then to come forward and oppose the application of the prospective adoptive parents for guardianship of the child. Moreover, the biological parents would then come to know who is the person taking the child in adoption and with this knowledge they would at any time be able to trace the whereabouts of the child and they may try to contact

> the child resulting in emotional and psychological disturbance for the child which might affect his future happiness. The possibility also cannot be ruled out that if the biological parents know who are the adoptive parents they may try to extort money from the adoptive parents. It is therefore absolutely essential that the biological parents should not have any opportunity of knowing who are the adoptive parents taking the child in adoption and therefore notice of the application for guardianship should not be given to the biological parents. .....
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> We may add even at the cost of repetition that the biological parents of a child taken in adoption should not under any circumstances be able to know who are the adoptive parent of the child nor should they have any access to the home study report or the child study report or the other papers and proceedings in the application for guardianship o the child....."

23/ Having noticed the directions issued and guidelines laid down by the Apex Court, the question which needs consideration is: whether the aforesaid guidelines have been scrupulously followed by defendant No.3. Whether the child was rightly and legally relinquished by the biological mother; Whether she was given reasonable time after birth of her child

to think or take decision whether to rear up the child or to relinquish him for adoption and as to whether sufficient time was allowed to the child to over come any health problems experience after birth. Whether the consent given by the mother during her period of minority could be said to be a legal and valid consent. Whether the alleged consent given by her was under the coercion of her parents and whether circumstances were created which compelled defendant No.3 – appellant herein; to accept custody of the minor child without waiting for a minimum period of three months from the date of birth of the child as set out by the Apex Court. Whether such period prescribed is mandatory or discretionary. Whether the state of mind of the biological mother was such that, had defendant No.3 not accepted custody of minor child, then the child would have been further exposed to the vagaries of his minor mother leading to his abandonment or relinquishment in a most atrocious manner.

24/ All the above questions, in my opinion, cannot be decided on the basis of the rival affidavits. The disclosure of names of adoptive parents at this stage of the suit would neither be in the interest of the adopted child nor it would be in the interest of the adoptive parents. If the details of the adoptive parents are allowed to be disclosed, then biological parents are bound to create number of problems for them. It is no doubt true that the guidelines are laid down by the Apex Court but appellant urged that those guidelines cannot be applied like a straight jacket formula. Sometimes they are required to be moulded looking to the peculiar situation emerging from the facts of each case. To what extent they can be moulded is another question. The issue sought to be raised being absolutely sensitive, I am afraid, the decision of the case in hand on the basis of rival submission based on rival statements on oath may yield a result which may not be in the interest of a minor child in question.

25/ In the above circumstances, I am of the opinion that without going into the legal niceties and various legal technical contentions raised by the rival parties, it would be in the interest of justice to direct postment of the decision on notice of motion till the rival parties are allowed to lead their evidence so as to permit them to prove their rival contentions may be by directing expeditious disposal of the suit, if necessary on day to day basis. The rival parties can lead their evidence and bring factual material on record in support of their rival submissions. Liberty to the trial Court can be granted to appreciate the same and to apply to the facts of the case keeping in mind the welfare of the child as a paramount consideration. It would be hazardous to decide the issue raised herein; merely on the basis of rival affidavits drafted by legal brain to support the contentions of their clients. Most of the time, things are blown out of proportion or beyond true facts in the affidavit. Most of the time defendants find it

difficult to support. Whereas while recording evidence, the trial Court would be in a position to watch demeanour of the witnesses which will help the trial Court to find out where the truth lies. After the factual material is brought on record by way of evidence, it would be open for the trial Court to consider as to whether defendant No.3 – appellant herein be directed to disclose the details of the adoptive parents.

26/ In the circumstances, impugned order is liable to be set aside without recording any finding on the merits or demerits of the order of the trial Court. The trial Court is also liable to be directed to try the suit on day to day basis; record evidence and decide notice of motion after recording evidence of rival parties as expeditiously as possible, at any rate, within four months from the date of communication of this order on its own merits as directed herein below, hence the following order:

O R D E R

The impugned order dated 13th October, 2003 passed in Notice of Motion No. 2569 of 2003 dated 9th July, 2003 directing defendant No.3 to disclose names and addresses of the adoptee parents of the child of the plaintiffs to the Court in a sealed cover on or before 20th October, 2003 with further directions directing trial of the suit after serving copies of the proceedings on the adoptee parents is quashed and set aside. The Notice of Motion No.2569 of 2003 is restored to the file of the trial Court. Trial Court is directed to consider only prayer clause (c) of the notice of motion, excluding bracketed portion, only after recording evidence of the rival parties. Prayer clause (c) reads thus:

> "(c) that pending the hearing and final disposal of the suit, the defendants [be restrained from interfering with the rights of the plaintiffs and the said infant child and not to remove the infant child from the custody of the alleged adoptee parents and

therefore pending the hearing and final disposal of the suit, the defendant No.3] by an mandatory order and directions of the Hon' ble Court be directed to disclose immediately to this Hon' ble Court the whereabouts of the said infant child Adnaan [and further this Hon'ble Court may take legal custody of the said child.]"

(Bracketed portion to be excluded)

Rest of the interim prayers of the notice of motion having been already rejected by the trial Court and not being subject matter of any further challenge need no consideration. It is made clear that, in the event of the order of trial Court being adverse to the defendant/ appellant herein; the same shall stand stayed for a period of four weeks from the date of the order.

All the rival contentions of rival parties are kept open. Trial Court shall decide rival contentions on their own merits

as directed hereinabove. The observations, if any, made in this order are to be taken as prima facie.

Appeal is, thus, allowed in terms of this order with no order as to costs.

All concerned to act on ordinary copy of this order duly authenticated by the Associate/ Personal Secretary of this Court.

C.C. Expedited.

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